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10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

12 WAYMO LLC,

13 Plaintiff,

14 vs.

15 UBER TECHNOLOGIES, INC.;  
16 OTTOMOTTO LLC; OTTO TRUCKING  
LLC,

17 Defendants.

CASE NO. 3:17-cv-00939-WHA

**PLAINTIFF WAYMO LLC'S  
ADMINISTRATIVE MOTION TO FILE  
UNDER SEAL PORTIONS OF ITS  
SUPPLEMENTAL OFFER OF PROOF  
REGARDING OTTO TRUCKING, AND  
SUPPLEMENTAL BRIEF IN SUPPORT  
OF BOTH ITS OPPOSITION TO OTTO  
TRUCKING'S MOTION FOR SUMMARY  
JUDGMENT (DKT. 1526-4) AND ITS  
OPPOSITION TO OTTO TRUCKING'S  
MOTION FOR A SEPARATE TRIAL  
(DKT. 1934)**

Pursuant to Civil L.R. 7-11 and 79-5, Plaintiff Waymo LLC (“Waymo”) respectfully requests to file under seal portions of its Supplemental Offer of Proof Regarding Otto Trucking, and Supplemental Brief in support of both its Opposition to Otto Trucking’s Motion for Summary Judgment (Dkt. 1526-4) and its Opposition to Otto Trucking’s Motion for a Separate Trial (Dkt. 1934) (collectively, “Supplemental Otto Trucking Brief”) and exhibits thereto. Specifically, Waymo requests an order granting leave to file under seal the portions of the documents as listed below:

Document	Portions to Be Filed Under Seal	Designating Party
Waymo’s Supplemental Otto Trucking Brief	Highlighted Portions	Waymo (green highlighting); Defendants (blue highlighting)
Exhibit 1 to the Nardinelli Declaration	Entire Document	Defendants and/or Stroz Friedberg
Exhibit 2 to the Nardinelli Declaration	Entire Document	Defendants
Exhibit 3 to the Nardinelli Declaration	Entire Document	Defendants
Exhibit 4 to the Nardinelli Declaration	Entire Document	Defendants
Exhibit 5 to the Nardinelli Declaration	Entire Document	Defendants
Exhibit 6 to the Nardinelli Declaration	Entire Document	Defendants
Exhibit 7 to the Nardinelli Declaration	Entire Document	Defendants
Exhibit 8 to the Nardinelli Declaration	Entire Document	Defendants
Exhibit 9 to the Nardinelli Declaration	Entire Document	Defendants
Exhibit 10 to the Nardinelli Declaration	Entire Document	Defendants
Exhibit 11 to the Nardinelli Declaration	Entire Document	Waymo (green highlighting); Defendants
Exhibit 12 to the Nardinelli Declaration	Entire Document	Waymo (green highlighting); Defendants
Exhibit 13 to the Nardinelli Declaration	Entire Document	Defendants
Exhibit 14 to the Nardinelli Declaration	Entire Document	Defendants

Declaration		
Exhibit 15 to the Nardinelli Declaration	Entire Document	Defendants
Exhibit 16 to the Nardinelli Declaration	Entire Document	Defendants
Exhibit 17 to the Nardinelli Declaration	Entire Document	Defendants
Exhibit 18 to the Nardinelli Declaration	Entire Document	Defendants
Exhibit 19 to the Nardinelli Declaration	Entire Document	Defendants
Exhibit 20 to the Nardinelli Declaration	Entire Document	Defendants

## **I. LEGAL STANDARD**

Civil Local Rule 79-5 requires that a party seeking sealing “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is “sealable”). Civil L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.* In the context of non-dispositive motions, materials may be sealed so long as the party seeking sealing makes a “particularized showing” under the “good cause” standard of Federal Rule of Civil Procedure 26(c). *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (quoting *Foltz v. State Farm Mutual Auto Insurance Co.*, 331 F.3d 1122, 1135, 1138 (9th Cir. 2003)).

## **II. THE COURT SHOULD SEAL WAYMO’S CONFIDENTIAL INFORMATION**

The Court should seal the portions of Waymo’s Motion and exhibits 11-12 (highlighted green) identified by Waymo in the table above. Waymo seeks to file this information under seal because it discloses Waymo’s trade secrets. *See* Declaration of Lindsay Cooper (“Cooper Decl.”) ¶¶ 3-5. Courts have determined that trade secret information merits sealing. *Music Grp. Macao Commercial Offshore Ltd. v. Foote*, No. 14-cv-03078, 2015 WL 3993147, at \*1 (N.D. Cal. June 30, 2015) (quoting *Kamakana*, 447 F.3d at 1179); *see also Brocade Commc’ns Sys., Inc. v. A10 Networks, Inc.*, No. C 10-3428, 2013 WL 211115, at \*1, \*3 (N.D. Cal. Jan. 17, 2013) (granting request to seal document that “consists entirely of descriptions of Brocade’s trade secrets”). Confidential business information that,

1 if released, may “harm a litigant’s competitive standing” also merits sealing. *See Nixon v. Warner*  
2 *Commc’ns, Inc.*, 435 U.S. 589, 598-99 (1978). Waymo seeks to seal trade secrets that fit squarely  
3 within these categories. Cooper Decl. ¶ 3. Waymo maintains this information as a trade secret (*see*  
4 Dkt. 25-31) and ensures the information remains secret with strict secrecy and security protocols (*see*  
5 Dkt. 25-47; Dkt. 25-49.). *See* Cooper Decl. ¶ 3. Waymo has narrowly tailored its requests to only  
6 information meriting sealing. *Id.* ¶ 4. In fact, both *Music Group* and *Brocade* found the confidential  
7 information at issue in those cases met the heightened “compelling reasons” standard for sealing.  
8 *Music Grp.*, 2015 WL 3993147, at \*1; *Brocade*, 2013 WL 211115, at \*1, \*3. The information that  
9 Waymo seeks to seal, therefore, also meets this heightened standard. The disclosure of Waymo’s  
10 trade secret information would harm Waymo. Cooper Decl. ¶ 3. Moreover, the scope of information  
11 that Waymo is seeking to seal is consistent with other administrative motions to seal that have already  
12 been granted by the Court in this case. (*See, e.g.*, Dkt. 416, 414, 406, 393, 392.) Thus, the Court  
13 should grant Waymo’s administrative motion to seal.

### 14 **III. DEFENDANTS’ CONFIDENTIAL INFORMATION**

15 Waymo seeks to seal the portions of Waymo’s Motion (highlighted blue) and the entirety of  
16 Exhibits 1-20 as identified in the table above, because Waymo believes such information is considered  
17 confidential or non-public by Defendants and/or by certain third parties. Cooper Decl. ¶ 5. Waymo  
18 takes no position as to the merits of sealing any of designated material, and expects Defendants to file  
19 declarations in accordance with the Local Rules.

1 **IV. CONCLUSION**

2 In compliance with Civil Local Rule 79-5(d), redacted and unredacted versions of the  
3 above listed documents accompany this Administrative Motion. For the foregoing reasons,  
4 Waymo respectfully requests that the Court grant Waymo's administrative motion to file under  
5 seal.

6  
7 DATED: October 23, 2017

QUINN EMANUEL URQUHART & SULLIVAN,  
LLP

8  
9 By /s/ Melissa J. Baily

Melissa J. Baily  
Attorneys for WAYMO LLC